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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DEBBIE JEAN MEDINA,

Defendant and Appellant.

F042881

(Super. Ct. No. SC080173A)

O P I N I O N

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Robert J. Anspach, Judge.

Eleanor M. Kraft, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, and John G. McLean, Deputy Attorney General, for Plaintiff and Respondent.

* Before Dibiaso, Acting P.J.; Harris, J.; and Levy, J.

Appellant, Debbie Jean Medina, was convicted by a jury of one count of possession of a controlled substance for sale (Health & Saf. Code,¹ § 11378), and maintaining a place for the purpose of narcotic sales (§ 11366.5). The trial court subsequently sentenced appellant to three years of felony probation on the condition that she serve six months in the county jail.

Appellant raises a single issue on appeal. She claims the trial court erred in excluding evidence relating to third party culpability. We find no error, and affirm the judgment.

FACTS

Appellant lived with her daughters, Erica Garcia (Garcia) and Jessica Garcia (Jessica), and Erica's one-year-old daughter in December 1999. The family lived in a two-bedroom apartment with appellant and Jessica sharing one room. Jessica was on juvenile probation at the time.

At approximately 8:40 p.m. on December 1, 1999, several probation officers arrived at appellant's home to conduct a probation search of Jessica. Appellant was not at the apartment at the time of the search, but arrived a short time later. Probation officer Tracy Mericke searched the room shared by Jessica and appellant. During the search, Mericke discovered a small black box in the closet that contained numerous packets of methamphetamine. Each baggie was marked with what appeared to be the quantity contained in the package. Mericke also conducted a search of appellant and found \$226 in her bra. In addition, Mericke discovered a paper with names and dollar amounts written on it in Garcia's bedroom. Probation officer Stanley Sweaney opined that the paper was a pay owe sheet that was used to record drug sales.

¹ All further references are to the Health and Safety Code unless otherwise indicated.

Probation officer Stanley Sweaney showed appellant the box containing the methamphetamine. Appellant stated she had never seen the drugs before and they did not belong to her. Subsequently, Sweaney informed appellant of her *Miranda*² rights and Bakersfield police officer Joseph Aldana conducted an interview of appellant.

Aldana testified that appellant stated she and Garcia were involved in methamphetamine sales and the methamphetamine had been dropped off by Antonio Gomez earlier that evening. Gomez brought the drugs over for her to sell. Appellant stated Gomez marked the numbers on the bindles and had packaged them. Appellant stated she was selling the drugs to make extra money. Aldana interviewed Garcia who admitted making the notations on the sheet for appellant. Aldana opined the drugs were possessed for sale.

Garcia testified that earlier that evening Gomez came over and asked if he could leave something there. Garcia and Gomez previously had a dating relationship; however, the two had stopped dating some time prior to night he came over. Gomez is the father of Garcia's child. Garcia allowed Gomez to leave his items at the apartment, but said she did not want him to leave anything in her room because she does not get along with him. She saw Gomez carrying a small black box that he said he left in appellant's closet. Appellant was not at home at that time. Gomez did not normally come over and leave things at the residence, but he said he had to meet some people down the street and he did not want to take the items with him. He came back later to pick up his things, but he did not take the black box with him.

Garcia did not see the black box after Gomez dropped it off until the probation officers showed it to her. One of the officers showed Garcia a piece of paper containing names and dollar amounts written in her handwriting. Garcia denied telling the officer that the paper was a pay owe sheet he had written for appellant. Garcia admitted writing

² *Miranda v. Arizona* (1966) 384 U.S. 436.

the notations on the paper, but claimed it was to record amounts of money people borrowed from her. The paper did not have anything to do with drug sales. Garcia denied telling the officer that Gomez previously sold methamphetamine.

When the probation officers found the black box, they asked her if it belonged to appellant and she said it did not. Rather, she told them the box belonged to Gomez. Garcia did not know there were drugs in the box until the officers told her. Garcia has never observed appellant selling methamphetamine.

Garcia stated she was only a few feet away from appellant when the officers questioned her. She never heard appellant admit to selling drugs. Appellant only said she did not know where the drugs came from.

Defense Case

Appellant testified in her own defense. When she arrived home that evening, probation officers were searching her residence. Appellant denied seeing the black box before that night and stated she did not know what it contained. Appellant explained that the money the officer found in her bra was from her welfare check that she had cashed earlier that day. Her check was for approximately \$700, but she had already spent the remainder on her rent and bills.

Appellant denied telling Aldana that she was selling drugs. She never sold drugs for Gomez. In fact, she and Gomez did not get along. Appellant stated that she did not know that Gomez had come over that day, and she stated that she did not know him well. She also stated that Gomez had been in jail for the statutory rape of her daughter prior to this incident.

DISCUSSION

During trial, appellant's counsel notified the court that he had spoken to appellant's mother, who told him that Gomez had previously been imprisoned for the statutory rape of Garcia. Appellant's mother indicated that Gomez had told her that he

was going to get even with the family. The prosecutor objected to the evidence, noting that she had interviewed appellant's mother and appellant's mother stated that the threat regarded physical violence. The trial court found the evidence was not timely discovered, and further held there was nothing indicating that Gomez knew appellant's room was going to be searched that day or any time thereafter. Thus, the court excluded the evidence. Appellant contends the trial court abused its discretion in excluding this evidence. We disagree.

To be admissible, third party evidence need not show substantial proof of a probability that the third person committed the act. The evidence need only be capable of raising a reasonable doubt of a defendant's guilt. Any evidence, however remote, need not be admitted to show potential third party culpability. There must be direct or circumstantial evidence linking the third person to the actual perpetration of the crime. The trial court's proper inquiry is limited to whether the evidence could raise a reasonable doubt as to the defendant's guilt, and then applying Evidence Code section 352. (*People v. Hall* (1986) 41 Cal.3d 826, 833; also see *People v. Bradford* (1997) 15 Cal.4th 1229, 1325.) If third party evidence is relevant, it is admissible unless its probative value is substantially outweighed by the risk of undue delay, prejudice, or confusion. (*People v. Von Villas* (1992) 10 Cal.App.4th 201, 265; *People v. Hall, supra*, 41 Cal.3d 826, 834.)

We find no abuse in the trial court's exclusion of appellant's mother's testimony. The only offer of proof relating to this testimony was that the witness would testify that Gomez had previously been incarcerated for the statutory rape of Garcia, and that he had subsequently made a threat against the family. However, the prosecutor clarified that the threat involved physical violence against appellant's mother. This testimony would have had little relevance to the trial. Appellant argues the testimony would have established that Gomez placed the drugs in appellant's closet to exact revenge against the family. Not so. At most, the evidence would have established that Gomez had a motive to dislike

the family. However, as Gomez's threat was one of physical violence, it had little relevance to the issues in this case. Thus, the trial court was not required to admit the testimony. We note that the trial court did allow the defense to present other evidence linking Gomez to the drugs. Garcia testified that the box belonged to Gomez, and he placed it in appellant's room without appellant's knowledge. The trial court only excluded evidence of a speculative motive.

In any event, even if we were to agree with appellant that the trial court improperly excluded the evidence, we would find the error harmless. Here, the trial court's ruling did not constitute a refusal to allow defendant to present a defense, but merely rejected certain evidence concerning the defense. Accordingly, the proper standard of review is that enunciated in *People v. Watson* (1956) 46 Cal.2d 818, 836. (*People v. Bradford, supra*, 15 Cal.4th at p. 1325; *People v. Cudjo* (1993) 6 Cal.4th 585, 611.)

Appellant seems to argue that all inferences of third party culpability were excluded with the trial court's ruling. Not so. At trial, Garcia testified that Gomez had brought over the black box containing the methamphetamine earlier that day. In addition, appellant testified that Gomez had previously been incarcerated for the statutory rape of Garcia. Appellant further testified that she had not seen the box before and the methamphetamine did not belong to her. Thus, the jury was in fact presented with evidence which, if believed, would have implicated Gomez and not appellant. Additional testimony that Gomez had previously threatened the family with physical violence would not have significantly bolstered that claim.

Furthermore, the evidence against appellant was overwhelming. The box containing the methamphetamine was found in appellant's closet. When questioned about the discovery, appellant initially denied the item was hers, but subsequently admitted to Aldana that she was selling the drug. Appellant was searched and officers found \$226 in cash on her person. Appellant claimed that the money came from her

welfare check; however, she further testified that her check was for over \$700. In addition, a paper consistent with a pay owe sheet used for narcotics sales, was found in the apartment. Aldana testified that Garcia admitted she had prepared the sheet at appellant's direction. In light of the extremely strong evidence against appellant, it was not reasonably probable that the verdict would have been more favorable to the defense had the trial court admitted evidence of Gomez's prior threat against the family.

DISPOSITION

The judgment is affirmed.